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Docket Nos.: 50-315
50-316

U. S. Nuclear Regulatory Commission
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DOCKET NUMBER
PETITION RULE PRM 26-2
(64FR67202)

Donald C. Cook Nuclear Plant Units 1 and 2
PETITION FOR RULEMAKING; REQUEST FOR COMMENTS ON
WORK HOUR LIMITS, 64 FED. REG. 67202 (DECEMBER 1, 1999).

Indiana & Michigan Power Company (I&M), the licensee for Donald C. Cook Nuclear Plant, endorses the comments submitted by the Nuclear Energy Institute (NEI) regarding the September 28, 1999, petition for rulemaking submitted by Mr. Barry Quigley. For the reasons described below, we similarly believe that Mr. Quigley's petition for rulemaking should be denied.

As NEI noted, the industry has already appropriately addressed potential fatigue-related issues through self-regulation consistent with or more conservative than NRC guidelines. The industry has developed work schedule restrictions and training programs for workers performing safety-related tasks that appropriately address potential fatigue-related issues. The Petitioner does not show that these restrictions and programs are not meeting their intended goals. Furthermore, granting the Petitioner's request would result in imposition of an impermissible backfit on licensees in violation of 10 C.F.R. § 50.109.

In addition to the issues raised by NEI justifying denial of this petition, I&M has identified additional concerns regarding Mr. Quigley's request for rulemaking. Specifically, this petition should be denied because it is based upon unsupported claims.

The Petitioner raises several contentions that are unsupported with objective evidence and outside of the Petitioner's expertise (as an operator at a nuclear plant). I&M identifies a few of these unsupported contentions here. As a first example, the Petitioner does not substantiate his contention that "fatigue most probably played a role in a respectable percentage" of incidents recorded in

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the NRC's Human Factors Information System (HFIS). Mr. Quigley does not support this claim with scientific data to demonstrate that the NRC's failure to attribute the incidents to fatigue is faulted. Instead, Mr. Quigley cites the Department of Transportation's (DOT) expenditure of over \$30 million on fatigue-related research over a nine-year period – and from this, the Petitioner suggests that the NRC make a comparable research effort. Mr. Quigley offers no evidence resulting from the DOT research that would justify this kind of expenditure or to demonstrate that the NRC, when it has not attributed errors collected in the HFIS to fatigue, is wrong.

As a second example of the Petitioner's unsupported claims, I&M refers the NRC Staff to Mr. Quigley's claim that his proposed 16-hour shift limits are to address "acute fatigue." The Petitioner's claim is based on two scenarios of workers working "swing-shifts" – shifts other than typical daytime hours. Mr. Quigley asserts, without support, that a worker would rise at the 'normal' time of 8 a.m. even if the worker's shift did not begin until 3 p.m. or 11 p.m. Contrary to Mr. Quigley's statement that "sleeping during the day is not natural," experience of workers inside and outside of the nuclear industry shows that workers finishing an overnight shift can, and do, sleep during the day.

Mr. Quigley builds on his unsupported argument by comparing his interpretation of circumstances which would cause sleep deprivation, by working "swing-shifts," with Australian research suggesting that after 24 hours of being awake, an individual's degradation in performance is equal to a blood alcohol content of 0.10%. I&M has no basis for disagreeing with the Australian research; however, Mr. Quigley has not provided any evidence that such sleep deprivation does, or would, occur and Mr. Quigley has not demonstrated that he has any qualifications for making such conclusions.

Finally, the Petitioner does not credit the NRC with staying current with industry deregulation. Specifically, Mr. Quigley suggests that deregulation of the electricity industry will lead to cost cutting, including the reduction of staff, as if this alone will result in a change in the industry's constraints on worker overtime. The Petitioner fails to acknowledge, however, that the NRC is proactively addressing this issue. The NRC has issued a policy statement on deregulation and the NRC is empowered to ensure that licensees have the technical qualifications, including the necessary staff, to safely operate commercial nuclear facilities. The NRC is well aware of the issues, safety-related and otherwise, that are being raised due to deregulation. There are forums to deal with these issues (e.g., license conditions, the new oversight program, and, where appropriate, demands for information), but the case has not been made that licensees are reducing staff in a manner that threatens the safe

operation of facilities. In fact, the nuclear industry's performance has consistently improved over the last decade.

In conclusion, granting this petition would unreasonably constrain licensee flexibility and would unnecessarily compel licensees to increase staff at nuclear facilities to stay within the Petitioner's prescribed overtime limitations. Moreover, the NRC and the industry have already addressed the issues raised by Mr. Quigley, through issuance of NRC guidance and through self-regulation, and the Petitioner raises no compelling argument that warrants re-evaluation of worker fatigue and overtime guidelines. For the reasons stated, I&M therefore requests that the NRC deny this petition.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Bakken". The signature is fluid and cursive, with the first name "Chris" and last name "Bakken" clearly distinguishable.

Chris Bakken
Site Vice President

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